

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

MARQUIS G.,

Claimant,

vs.

SAN DIEGO REGIONAL CENTER,

Service Agency.

OAH No. L 2006051072

**DECISION**

This matter came on regularly for hearing, before Administrative Law Judge Roy W. Hewitt, Office of Administrative Hearings, at San Diego California on October 5, 2006.

Claimant appeared through his mother and was represented by Tom DiVerde, an attorney with the Office of Clients' Rights Advocacy, Protection and Advocacy, Inc.

The San Diego Regional Center (agency) was represented by Ronald House, Esq.

Oral and documentary evidence was received and the record was left open so the parties could present written closing statements/briefs. Claimant submitted a closing statement/brief, the agency did not. Claimant's closing statement/brief was read and considered, and the matter was deemed submitted on October 27, 2006.

**ISSUE**

Should claimant's Adoptive Assistance Program (AAP) benefits be set based on the rates of a level 3 or level 4 licensed residential care facility?

## FACTUAL FINDINGS

1. Claimant, whose date of birth is January 12, 2000, is a six-year-old male who qualifies for agency services based on a diagnosis of “severe” mental retardation. (Exhibits B-2, E, and F.)

2. As a result of an August 25, 2005 Individual Program Plan (IPP) meeting claimant’s service coordinator recommended that client’s AAP benefits should be funded at “the Level 3 owner operated ARM facility rate of \$1948.00 per month.” (Exhibit B-1.)

3. Claimant’s mother timely appealed from the agency’s “level 3” determination and the instant hearing ensued.

4. Claimant’s mother’s testimony established that claimant regularly exhibits the following behaviors and self-help deficits: When claimant is angry or frustrated he becomes “resistive.” Claimant tantrums, is aggressive, destroys property, engages in self-abuse and goes “AWOL” while at school and at home. Claimant’s tantrums consist of pinching, pushing, kicking and biting. Claimant’s tantrum behaviors occur daily and can last from 20 minutes to two or three hours. Claimant’s tantrums can escalate to outright aggression, consisting of hitting, kicking and biting others. Some of claimant’s aggressive behaviors have injured his mother, causing scars on her arms, wrists and hands. At night, if claimant is left alone in a room, he will “tear up” the room, climb furniture, mark the walls and floor, and throw items out of the windows. Claimant’s night-time acting-out can last from approximately 8:00 p.m. to 11:00 p.m., or even until midnight on some nights. Claimant has put holes in walls, and has broken the television, a DVD player and a piano. Claimant also engages in self-injurious behaviors, such as pulling his hair out in “plugs,” pulling his fingernails and toe nails off, picking at his face and scratching himself. Claimant can not bathe himself, brush his teeth, or dress himself, nor is he “potty trained.” When being transported to his special autism class at school claimant will wander around in the bus unless he is locked in a special seat-belt restraint. At school, claimant has pulled his teacher’s hair, bitten her and scratched her.

5. Claimant’s service coordinator was not available to testify due to health reasons, however, her supervisor did testify. The supervisor’s testimony established the following: In conformity with California Code of Regulations, title 22, section 35333, the AAP provides benefits to facilitate the adoption of children who may not be adopted without the financial benefits provided by the AAP. The AAP provides that children with special needs may receive financial support from their county of residence. The Department of Developmental Services (DDS) is charged with determining the rate of AAP assistance the respective county must pay to facilitate the adoption of special needs children. In establishing the maximum AAP rate to be paid by the county, DDS sets a care level based on the foster family home rate the respective service agency would pay for the child if the child were placed in a service agency facility. The rate levels range from level 1 to level 4, with level 1 being the level requiring the least supervision of the child and level 4 being the level requiring the most supervision. In determining the appropriate rate level, the service agency considers the factors set forth in California Code of Regulations, title 17, section 56013. In the present instance there is no

question that claimant qualifies for at least a level 3 rate. A level 3 rate is appropriate for children who exhibit significant deficits in self-help skills and/or disruptive or self-injurious behaviors. A level 4 rate is appropriate for children who exhibit “severe” deficits in self-help skills and/or “severely” disruptive or self-injurious behaviors. When asked about claimant’s self-help deficits and his disruptive and self-injurious behaviors, as described by claimant’s mother, the supervisor conceded that the deficits and behaviors fell into the “severe” category.

## LEGAL CONCLUSIONS

The Factual Findings, considered in their entirety, reveal that the Agency incorrectly determined that claimant should be categorized as level 3 for purposes of determining the appropriate AAP rate. Claimant’s self-help deficits and his disruptive and self-injurious behaviors, as described in Finding 4, by claimant’s mother’s uncontested testimony, establish that claimant’s deficits and behaviors are “severe.” Consequently, pursuant to the rate schedule established by California Code of Regulations, title 17, section 56013, subdivisions (d)(1)(A) and (d)(1)(C), claimant qualifies for a level 4 care facility and must be rated at that level for establishing the appropriate AAP rate.<sup>1</sup>

## ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The agency’s determination that claimant claimant’s Adoptive Assistance Program (AAP) benefits be set based on the rate of a level 3 licensed residential care facility is set aside. The agency shall set the rate of claimant’s benefits at level 4.

DATED: \_\_\_\_\_

\_\_\_\_\_  
ROY W. HEWITT

<sup>1</sup> Claimant raises the issue of retroactive payment by the agency for the difference between the level 3 and level 4 payment rates in his closing brief; however, that issue was not addressed before or during the instant hearing. Accordingly, that issue is not one for which relief may be granted in these proceedings. In any event, the agency DDS is only tasked with the obligation to make rate determinations; the county is then responsible for making payments based on the rate set by the agency/DDS. Consequently, claimant must address his retroactive payment issue to the county.

Administrative Law Judge  
Office of Administrative Hearings

NOTICE

This is the final administrative decision; both parties are bound by this decision.  
Either party may appeal this decision to a court of competent jurisdiction within 90 days.